REMARKS

By the present Amendment, Claims 2, 12, 14, 19-21, 24-26, and 60-61 are currently amended and new claims 62-64 are added. Claims 7, 8, and 32-38 are cancelled without prejudice or disclaimer by the present Amendment, and Claims 1, 3-5, 9-11, 15-18, 22-23, 27-31, and 39-59 remain cancelled. Claims 6 and 13 are original. Support for the present amendments may be found, for example, in the original claims, sequence listing and specification, for example at page 11, line 26 through page 12, line 9 and page 30, lines 21-22.

Applicants thank Examiner Katherine Salmon and Supervisory Examiner Ram Shukla for the Personal Interview of July 28, 2008, and for the Examiners' comments, insights and guidance provided during the interview.

I. Priority

The Office Action mailed March 18, 2008 acknowledges that the present application is entitled to receive the benefit of priority to U.S. Application No. 60/155,422, filed September 23, 1999. Applicants thank the Office for this acknowledgement.

II. Withdrawn Objections

The Office Action mailed March 18, 2008 acknowledges that the objection to the specification made in Section 3 of the previous office action is moot. Applicants thank the Office for this acknowledgement.

III. Withdrawn Rejections

The Office Action mailed March 18, 2008 acknowledges that "[s]ome of the rejection made under 35 USC 112/2nd paragraph ... has been withdrawn.... In so much as the rejections still apply ... the rejections are reiterated below." Office Action at pages 4-5. As no 35 U.S.C. § 112, 2nd paragraph rejection has been reiterated, Applicants understand that no 112, 2nd paragraph rejections remain outstanding. Applicants thank the Office for this acknowledgement.

IV. Claim Objections

Claims 32-38 were objected to because "they depend from a cancelled claim". Office Action at page 5. In order to facilitate prosecution, Claims 32-38 have been cancelled by the present amendment. As such, Applicants respectfully request withdrawal of this objection.

V. Rejections Under 35 U.S.C. § 101

Claims 2, 6-8, 12-14, 19-21, 24-26, 32-38, and 60-61 were rejected under 35 U.S.C. §

101 as allegedly "not supported by either a credible asserted utility or a well established utility."

Office Action at page 5. Applicants respectfully disagree with this allegation.

Claim 2 recites, inter alia, "[a] substantially purified nucleic acid molecule... comprising from about 30 to 300 nucleotide residues of the nucleic acid sequence of SEQ ID NO: 5272...."

The Office acknowledges that according to the specification "...the claimed nucleic acids can be used to determine transcriptional profiling...." Office Action at page 7. In addition, the Office acknowledges that "[t]he specification further contemplates that the nucleic acid of SEQ ID NO: 5272 can be used for mapping studies, linkage analysis, constructing transgenic plants, and screening for traits or screening for polymorphisms...." Id. The Office suggests that these

utilities of SEQ ID NO: 5272 are not specific because "...all plant nucleic acids could be used for these purposes." *Id.* The uses of SEQ ID NO: 5272 are specific because they are specific to SEO ID NO: 5272 and not generally applicable to any sequence.

As discussed during the July 28 Interview, Applicants' specification recites that identified sequences, which necessarily include for example SEQ ID NO: 5272, can act as regulatory elements and as genes. See e.g., page 1, lines 19-26. Applicants' specification also notes the use of identified sequences to alter yield. See e.g., page 2, lines 17-21. Applicants respectfully point out that the Office must accept these stated utilities in the absence of evidence or sound scientific reasoning to rebut Applicants' assertion. In re Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

In addition, the present application has been awarded priority to U.S. Provisional Application 60/155,422, filed September 23, 1999 ("the '422 application), which was incorporated by reference in its entirety at the time of filing the present application. As discussed during the July 28 Interview, the '422 priority application identifies SEQ ID NO: 5272 (which is referred to as SEQ ID NO: 9911 in the '422 application) as a COL2 gene. See e.g., Attachment D.¹

As of the September 23, 1999 priority date of the captioned application, those skilled in the art were well aware that COL2 referred to a "CONSTANS-like" gene and showed significant homology to CONSTANS, where CONSTANS had been identified as a putative zinc finger transcription factor affecting growth, namely, flowering. See e.g., Putterill, J. et al., Cell 80:847-857 (1995) and Ledger, S.E. et al., PGR 96-081 112:862 (1996). As such, Applicants

¹ Attachment D contains information excerpted from priority application 60/155,422. For the convenience of the Office, the column headers that appear at the beginning of the table from which Attachment D was excerpted have been carried over from the first page of the table where they appear and added to this Attachment.

respectfully submit that Applicants had established a specific, substantial, and credible utility for SEO ID NO: 5272 at the time of filing.

Moreover, in the meantime, since filing, additional evidence further demonstrates that these specific and substantial utilities of SEQ ID NO: 5272, as recited at the time of filing the '422 priority application, are indeed accurate. For example, U.S. Patent Publication 2008/0010703 evidences the fact that the specific and substantial utilities stated in Applicants' specification as filed and in the '422 priority application are indeed utilities of SEQ ID NO: 5272. See e.g., US 2008/0010703.

As detailed in U.S. Patent Publication 2008/0010703, G1988 is a nucleic acid sequence that differs by a single nucleotide from the corresponding region of SEQ ID NO: 5272. See e.g., Attachment E. However, this nucleotide difference does not alter the encoded protein (i.e., is a silent nucleotide change). As such, G1988 encodes the identical protein as the corresponding region of SEQ ID NO: 5272. See id. G1988 has been demonstrated to increase yield in plants, when yield is measured over 1, 2 and 3 year intervals. See e.g., US 2008/0010703 at Figure 6 and Tables 12 and 13. Indeed, co-pending U.S. Application No. 11/821,448 evidences "significantly increased yield...." US 2008/0010703 A1 at paragraph [0037].

In sum, the claimed nucleotide sequence has utilities specific to it, and not simply general utilities applicable to any nucleic acid. The utilities of SEQ ID NO: 5272 are credible, substantial, and well-established; they are neither vague nor impractical. As Applicants need only establish a single utility to satisfy 35 U.S.C. § 101, they have undoubtedly satisfied 35 U.S.C. § 101 in the present case.

As discussed by Applicants during the July 28, 2008 Personal Interview with Examiner Salmon and Supervisory Examiner Shukla, specific and substantial utilities were provided by Applicants at the time of filing and these utilities satisfy the requirements of 35 U.S.C. § 101. Moreover, in the meantime, US 2008/0010703 has provided additional evidence of Applicants' utilities. Applicants' utilities, including for example, use for altering yield, have been clearly demonstrated for G1988 and the corresponding region of SEQ ID NO: 5272. See e.g., Specification at page 2, lines 17-21; see also Attachment D.

Based on the foregoing, Applicants respectfully submit that the present application fulfills the legal requirements of 35 U.S.C. § 101, Utility. As such, Applicants request withdrawal of the utility rejection.

VI. Rejection under 35 U.S.C. § 112, Enablement

Claims 2, 6-8, 12-14, 19-21, 24-26, 32-38 and 60-61 were rejected under 35 U.S.C. §

112, first paragraph, as not being enabled by the specification, because the claimed invention allegedly lacks utility (i.e., an invention with no utility cannot be enabled). Applicants respectfully traverse this rejection, and note that this rejection has been overcome by the foregoing arguments regarding utility. As such, reconsideration and withdrawal of the enablement rejection under 35 U.S.C. § 112, first paragraph is respectfully requested.

VII. Rejection under 35 U.S.C. § 112, Written Description

The Office rejected claims 2, 6-8, 12-14, 19-21, 24-26, 32-38 and 60-61 under 35 U.S.C. § 112, first paragraph, as allegedly "not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the

application was filed, had possession of the claimed invention." Office Action at page 17.

Applicants respectfully disagree with this allegation.

By the Office Action, the Office argues that the claims "... do not define the nucleic acids in terms of their functional properties." *Id.* at page 18. The Office further argues that "... the specification fails to teach the necessary common attributes or features of the genus." *Id.* at page 20. However, Applicants know of no legal requirement to define a claimed nucleic acid in terms of its function. Moreover, Applicants respectfully submit that SEQ ID NO:5272 provides a common feature sufficient to satisfy the written description requirement for the claimed invention.

The Office Action suggests that the Office's written description rejection results from the Office's interpretation of Applicants' claims to include any complement, regardless of size. See e.g., Office Action at page 22 (stating that "[t]he genus of claims include any fragment comprising SEQ ID No. 5272 comprising 30 to 300 nucleotide residues of SEQ ID No. 5272 and any complement which would include any sequence which shares any structure with SEQ ID No. 5272." (emphasis added)). At the Interview, the Office acknowledged that the written description rejection was based upon this interpretation of complement. Further, the Office acknowledged that a proposed amended claim including "about 30 to 300 nucleotide residues of a complement of the nucleic acid sequence of SEQ ID NO: 5272", as recited by the currently amended claims, would satisfy the written description requirements of 35 U.S.C. § 112.

Applicants thank the Office for these acknowledgements and respectfully submit that the rejection under 35 U.S.C. § 112, written description, has been rendered moot as to the presently pending claims.

VIII. Rejections Under 35 U.S.C. § 102, Novelty

a. 102(a) Genbank Accession No. AP000604

Claims 2, 6 to 8, 60 and 61 were rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by GenBank Accession No. AP000604. Office Action at page 23 et seq. Applicants respectfully traverse this rejection.

According to the Office "priority is given to application 60/155422 and therefore the priority date is 9/23/1999." *Id.* at page 4. As such, GenBank Accession Number AP000604, dated October 15, 1999 comes after the September 23, 1999 priority date acknowledged by the Office. Accordingly, Applicants respectfully submit that GenBank Accession Number AP000604 cannot be anticipatory under 35 U.S.C. § 102(a).

Based on the foregoing, withdrawal of the rejection under 35 U.S.C. § 102(a) is requested.

b. 102(b) Brennan

Claims 2, 6-8, 12-14, and 60-61 were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Brennan. Applicants respectfully traverse this rejection for at least the reasons that follow

The Office alleges that "[t]he term 'complement' is not defined in the instant specification..." Office Action at page 29. Applicants respectfully disagree with the Office's allegation. Nonetheless, in order to facilitate prosecution the present claims have been amended to recite for example, "about 30 to 300 nucleotide residues of a complement of the nucleic acid sequence of SEO ID NO: 5272".

As argued by the Office Action and acknowledged by the Office in the July 28 Interview, the rejection over Brennan was premised on the allegation that "... Brennan teaches every possible 10-mer." See e.g., Office Action at page 30. However, as discussed at the July 28 Interview, whatever else Brennan may teach or suggest, it does not teach or suggest "about 30 to 300 nucleotide residues of the nucleic acid sequence of SEQ ID NO: 5272, or about 30 to 300 nucleotide residues of a complement of the nucleic acid sequence of SEQ ID NO: 5272", i.e., Brennan does not teach or suggest a nucleic acid comprising at least about 30 nucleotide residues. Likewise, as respectfully pointed out by Applicants at the July 28 Interview, with regard to claims reciting a 98% identity, Brennan does not teach or suggest 98% of about 30 nucleic acids or about 29.4 nucleic acids.

Accordingly, Applicants respectfully submit that the presently pending claims cannot be anticipated by Brennan, and Applicants request withdrawal of the Office's rejection under 35 U.S.C § 102(b).

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully submit that the present application is now in condition for allowance, and respectfully request notice of such. The Examiner is encouraged to contact the undersigned at 202-942-5325 if any additional information is necessary for allowance.

Respectfully submitted,

Date: August 21, 2008

David R. Marsh (Reg. No. 41,408) Holly L. Prutz (Reg. No. 47,755) Lisa A. Adelson (Reg. No. 51,204)

Arnold & Porter LLP 555 Twelfth Street, N.W. Attn: IP Docketing Washington, DC 20004

Telephone: 202-942-5000 Facsimile: 202-942-5999

ATTACHMENT D

Ни Description	(AL649641) putaive procm. [Argidepsis finitans] (AC006522) bypottetical procim. [Ambidepsis finitans] PITA IVE ATP-APPENDENT RNA RELICASE TAGGIU.	BV CHROMOSOME III [] (AB015315) MAP kinase kinase 4 [Arabictopsis thallana] (AF038914) sinilae to progre mancrantase (Plan:	Hanszript, fact. Anna, scote. 72.31) [Arabidopsis dialitina] (ALMO746) ABC ransporter-like protein [Arabidopsis	trationaj (AC005223) 64111. [Azabidopsis tratianaj (AC006440) putativo Athila retroelement ORF1 procein	Arabidopas chaliuna (Arabidopa) thaliana) (Arabidopa) maliana) (Arabidopa) puniteo serincribrosmine protein krimse	Azandopsis (hallona)	(297342) hypothetical proton [Arabidapsis thalians]	(Atanostro) hyparostrosi promii (Atanoopee manare) (AF081067) [AA-A]a bydrolase (AA-amino acid tydrolase	[Arabidopsis thetiana] [AC005310] gutative zinc fransporter [Arabidopsis thatiana]	(AC007153) 55420 (Arabidopsis theliana)	(AC066223) putative (tassase resistance protein [Ambidopsis	(AC905314) putative DNA binding factor (Arabidopsis	thatiana] (297340) hypothesical protein [Arabidopsis thaliana]	(AFR69299) No definition line frank! (Arabidopsis thalians)	(A.136918) pataive Anda rerestement Offer protein [Ambidiment the fame]	[AC006245] putative reverse mascriptuse Tal-1. [Arabidopsis	thalisma] (ACM6592) putative reverse transcriptase. [Azabidopsis	thatima;	distantal (ASOCIATION CONTINUED CONT	(Arabidopsis thatiana)	(ALD21811) putative protein [Ambidopsis thallana]	(ALOZISii) hypothetical protein [Arabidopsis inaliana]	(ALPLIATION propries profess [Areacopsis mailana]	(helina)	(ACR63(4) putative reverse transcriptase. [Arabidapsis dations!	(ACOCL38) puritive pecitinesicare [Arabidopsis thatiana] (ACOCL38) FIAN23.18 [Arabidopsis thaliana]
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Gane 1d	ATL80s11837 ATL80s11838 ATL80s11839	ATL&On11846 ATL&On11841	ATL&On11842	ATLSOn11843 ATLSOn11844	ATLSOn11845 ATL80a11846	CM1.00011007	ATL80n11845	ATL 80n (1850	ATL30a11851	ATL80a11852	A 71,80n11853	ATL80a11854	ATL80s 11855	ATL8On 11856	A11,80a11857	ATL&On 11858	ATL8On11859	A77 87 W. 11860	CARTINOCAL TAX	A1 LeOnt 1903	ATL80n11862	ATLSOn 1863	ATT 00-11-054	Contraction and	A TUSOn 11860	ATL80n11867 ATL80n11868
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ATTACHMENT E

GAGTCCGCGGCACAATGGAGATCAGCTTCGGCACCACAAAGCTCGCAAAAGCTCACCAT

ATGGTGAGCTTTTGCGAGCTTTGTGGTGCCGAAGCTGATCTCCATTGTGCCGCGGGACTCTGCCTTCCTCT	70
G1988inPubl ATGGTGAGCTTTTGCGAGCTTTGTGGTGCCGAAGCTGATCTCCATTGTGCCGCGGACTCTGCCTTCCTCT	70
Consensus ATGGTGAGCTTTTGCGAGCTTTGTGGTGCCGAAGCTGATCTCCATTGTGCCGCGGACTCTGCCTTCCTCT	70
Reverse complement of nucleotides 2536 to 3210 of SEQ ID NO: 5272 GCCGTTCTTGTGACGCTAAGTTCCATGCCTCAAATTTTCTCTTCGCTCGTCATTTCCGGGGGTGTCATATTG G19881bb16	140
GCCGTTCTTGTGACGCTAAGTTCCATGCCTCAAATTTTCTCTTCGCTCGTCATTTCCGGCGTGTCATGTG	140

GCCGTTCTTGTGACGCTAGTTCCATGCCTCAAATTTTCTCTTCGCTCGTCATTTCCGGCGTGTCATCTC

Reverse complement of nucleotides 2536 to 3210 of SEQ ID NO: 5272
CCCAAATTGCAAATCTCTTACTCAAAATTTCGTTTCTTGGTCCTCTTCCTTGGCCTCCACGAACACA 210

G1988inPubl CCCAAATTGCAAATCTCTTACTCAAAATTTCGTTTCTGGTCCTCTTCCTTGGCCTCCACGAACAACA	210
Consensus CCCANATTGCANATCTCTTACTCANAATTTCGTTTCTGGTCCTCTTCTTCCTTGGCCTCCACGAACAACA	210
Reverse complement of nucleotides 2536 to 3210 of SEQ ID NO: 5272 TGTTGTTCAGAATCGTGTTCTTGTGCTGCTCTTGACTGTGTCTCAAGCTCCAAGCTCCGAGCTATCGTG1988inpub	280
TGTTGTTCAGAATCGTCGTCTTCTTGCTGCTCGTCTCTTGACTGTGTCTCAAGCTCCGAGCTATCGT	280
Consensus TGTTGTTCAGAATCGTCGTCTTCTTCTTGCTGCTCCTTGACTGTGTCTCAAGCTCCGAGCTATCGT	280
Reverse complement of nucleotides 2536 to 3210 of SEQ ID NO: 5272 CAACGCGTGAACGCGTAAACAGAGCGCGAGGGAAAACAGAGTGAATGCCAAGGCCGTTGCGGTTAC G1988inpubl	350
CAACGACGCGTGACGTAAACAGAGCGCGAGGGAGGGAAAACAGAGTGAATGCCAAGGCCGTTGCGGTTAC	350
Consensus CARCGACGCGTGACGTARACAGAGCGCGAGGGAGGGARAACAGAGTGAATGCCAAGGCCGTTGCGGTTAC	350
Reverse complement of nucleotides 2536 to 3210 of SEQ ID NO: 5272 GOTGGCGGATGGCATTITTGTAAATTGGTGTGGTAAGTTAGGACTAAACAGGGATTTAACAAACGCTGTC G1988inpubl	420
GGTGGCGGATGGCATTTTTGTAAATTGGTGTGGTAAGTTAGGACTAAACAGGGATTTAACAAACGCTGTC	420
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GGTGGCGGATGGCATTTTTGTAAATTGGTGTGGTAAGTTAGGACTAAACAGGGATTTAACAAACGCTGTC	420
Reverse complement of nucleotides 2536 to 3210 of SEQ ID NO: 5272 GTTTCATATGGTCTTTGGCTTTGGCTGTGGAGACGAGGCCAAGAGCGACGAAGAGAGTGTTCTTAGCGG G1988inpubl	490
GTTTCATATGCGTCTTTGGCTTTGGCTGTGGAGACGAGGCCAAGAGCGACGAAGAGAGTGTTCTTAGCGG	490
Consensus GTTTCATATGCGTCTTTGGCTTTGGCTGTGGAGACGAGGCCAAGAGCGACGAAGAGAGTGTTCTTAGCGG	490
Reverse complement of nucleotides 2536 to 3210 of SEQ ID NO: 5272 CGGCGTTTTGGTTCGGCGTTAAGGACACGACGACGACGACGACGATTTAAAGAAAG	560
CGGCGTTTTGGTTCGGCGTTAAGAACACGACGACGTGGCAGAATTTAAAGAAAG	560
Consensus CGGCGTTTTGGTTCGGCGTTAAGAACACGACGACGACGTGGCAGAATTTAAAGAAAG	560
Reverse complement of nucleotides 2536 to 3210 of SEQ ID NO: 5272 AGTTTCAGCTGGGATGATTCGAGCGGTTGAAAGCAAATTGGCGCGTGCAATGACGCAGCAGCTTAGACGG G1988inPubl	630

AGTTTCAGCTGGGATGATTCGAGCGGTTGAAAGCAAATTGGCGCGTGCAATGACGCAGCAGCTTAGACGG 630

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Reverse complement of nucleotides 2536 to 3210 of SEQ ID NO: 5272 TGGCGCGTGGATTCGGAGGAAGGATGGGCTGAAAACGACAACGTT 675 G1988inPub	
TGGCGCGTGGATTCGGAGGAAGGATGGGCTGAAAACGACAACGTTTGA 678	
Consensus TGGCGCGTGGATTCGGAGGAAGGATGGGCTGAAAACGACAACGTTtga 678	
> Protein Sequence encoded by Reverse complement of nucleotides 2536 to of S8Q ID NO: 5272 (hereinafter "Prot Seq 5272 RC") MWSFCELCGRADLICADSAPICARSOLARFHASNIFIARHFREVICYNCKSLTQNFVSG PLLFWPPRTTCCSESSSSSCCSSLDCVSSSELSSTTRDVNRAKGRENRYNAKAVAVTVAD GIFVWRGCKLGINRDLINAVSYASLALAVETREPARKWYLAAAFWFGVKNTTTWQNLK KVEDVTGVSAGMIRAVESKLARAMTQQLRRWRVDSEEGWAENDNV	3210
>Protein Sequence G1988 in Publ MVSFCELCGARADLHCAADSAFLCRSCDAKFHASNFLFARHFRRVICPNCKSLTQNFVSG PULLPHPRFTICCSBSSSSCSSLDCVSSSELSSTTEDVNRARGRENRVNAKAVAVTVAD GIFVNWCGKLGLNRDLTNAVVSYASLALAVETRPRTKRVFLAAAFWFGVKNTTTWQNLK KVEDVTGVSAGMIRAVESKLARAMTQQLRRWRVDSEEGWAENDNV*	
Prot Seq 5272 RC MVSFCELCGARADLHCAADSAFLCRSCDAKFHASHFLFARHFRRVICPNCKSLTQNFVSGPLLPWPPRTT Protein Sequence G1988 in Publ	70
TOGETH SEQUENCE G1986 IN FULL MADE TO THE SEQUENCE	70
Consensus mvsfcelcgaradlecaadsaflcrscdakfeasnflfarhfrrvicpncksltqnfvsgpllpwpprtt	70
Prot Seq 5272 RC CCSESSSSSCCSSLDCVSSSELSSTTRDVNRARGRENRVNAKAVAVTVADGIFVNWCGKLGLNRDLTNAV	140
Protein Sequence G1988 in Publ CCSESSSSSCCSSLDCVSSSELSSTTRDVNRARGRENRVNAKAVAVTVADGIFVNWCGKLGLNRDLTNAV	140
Consensus	
CCBESSSSSCCSSLDCVSSSELSSTTRDVMRARGRENRVNAKAVAVTVADGIFVNWCGKLGLMRDLTNAV	140
Prot Seq 5272 RC VSYASLALAVETRPRATKRYFLAAAFWFGVKNTTTWQNLKKVEDVTGVSAGMIRAVBSKLARAMTQQLRR Protein Sequence G1988 in Publ	210

VSYASLALAVETRPRATKRVFLAAAFWFGVKNTTTWONLKKVEDVTGVSAGMIRAVESKLARAMTQQLRR 210

VSYASLALAVETRPRATKRYFLAAAFWFGVKNTTTWONLKKVEDVTGVSAGMIRAVESKLARAMTQQLRR 210

Prot Seq 5272 RC WRVDSEEGWAENDNV 225

Consensus

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